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Attorneys for Defendants Ute Indian Tribe of the Uintah and Ouray Reservation; Business Committee for the Ute Tribe of the Uintah and Ouray Reservation; Tribal Court for the Ute Tribe of the Uintah and Ouray Reservation; Irene C. Cuch; Ronald J. Wopsock; Frances M. Poowegup; Stewart Pike, Sr.; Richard Jenks, Jr.; Phillip Chimburas; and Honorable Smiley Arrowchis

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

HONORABLE CLAIR M. POULSON, in his
official capacity as Judge of the Duchesne
County Justice Court, and DEREK DALTON,

Plaintiffs,

v.

UTE INDIAN TRIBE OF THE UINTAH and
OURAY RESERVATION; BUSINESS
COMMITTEE FOR THE UTE TRIBE OF
THE UINTAH and OURAY RESERVATION;
TRIBAL COURT FOR THE UTE TRIBE OF
THE UINTAH and OURAY
RESERVATION; IRENE C. CUCH, in her
official capacity as Chairman of the Business
Committee for the Ute Tribe; RONALD J.
WOPSOCK, in his official capacity as Vice-

**MOTION TO DISMISS THE AMENDED
COMPLAINT UNDER FED. R. 12(b)(1),
(2), (4) AND (5) BY DEFENDANTS UTE
INDIAN TRIBE OF THE UINTAH AND
OURAY RESERVATION; BUSINESS
COMMITTEE OF THE UTE TRIBE
OF THE UINTAH AND OURAY
RESERVATION; TRIBAL COURT FOR
THE UTE TRIBE OF THE UINTAH AND
OURAY RESERVATION; IRENE C.
CUCH; RONALD J. WOPSOCK;
FRANCES M. POOWEGUP; STEWART
PIKE, SR.; PHILLIP CHIMBURAS; AND
HONORABLE SMILEY ARROWCHIS**

Chairman of the Business Committee for the Ute Tribe; FRANCES M. POOWEGUP, in her official capacity as a Member of the Business Committee for the Ute Tribe; STUART PIKE, SR., in his official capacity as a Member of the Business Committee for the Ute Tribe; RICHARD JENKS, JR., in his official capacity as a Member of the Business Committee for the Ute Tribe; PHILLIP CHIMBURAS, in his official capacity as a Member of the Business Committee for the Ute Tribe; HONORABLE SMILEY ARROWCHIS, in his official capacity as Chief Judge of the Ute Trial Court; LYNDIA KOZLOWICZ; EDSON GARDNER; KOZLOWICZ & GARDNER ADVOCATES, INC., a Ute Indian corporation; ATHENYA SWAIN; DEAN REED and JOHNNY SLIM, SR.,

Defendants.

Civil No. 2:12-cv-00497

Judge Dale A. Kimball

Magistrate Judge: Evelyn J. Furse

ORAL ARGUMENT REQUESTED

COMES NOW the Defendants Ute Indian Tribe of the Uintah and Ouray Reservation, Business Committee for the Ute Tribe of the Uintah and Ouray Reservation, Tribal Court for the Ute Tribe of the Uintah and Ouray Reservation, Irene C. Cuch, Ronald J. Wopsock, Frances M. Poowegup, Stewart Pike, Sr., Richard Jenks, Jr., Phillip Chimburas and Honorable Smiley Arrowchis (collectively referred to herein as “Tribal Defendants”), through undersigned counsel, and move to dismiss the claims filed against them by Plaintiffs Honorable Clair M. Poulson and Derek Dalton for lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process and insufficient service of process.

This Court lacks subject matter jurisdiction on grounds of (i) Indian tribal sovereign immunity; (ii) lack of federal question jurisdiction under 28 U.S.C. § 1331; and (iii) lack of diversity jurisdiction under 28 U.S.C. § 1332. To begin with, there is no waiver of tribal

sovereign immunity; secondly, the Plaintiffs' request for declaratory relief does not raise a federal question; and thirdly, the Tribal Defendants are not citizens of any state for purposes of diversity jurisdiction. Accordingly, this Court is without subject-matter jurisdiction and the claims against the Tribal Defendants must be dismissed with prejudice.

This Court lacks personal jurisdiction on the grounds of (i) insufficient process; and (ii) insufficient service of process. Tribal Defendants were not properly served the Summons and Amended Complaint in this matter pursuant to the requirements of Rule 4(e) and (h) of the Federal Rules of Civil Procedure. Accordingly, this Court is without personal jurisdiction and the claims and against the Tribal Defendants must be dismissed with prejudice.

The legal authority for the motion is contained in Tribal Defendants' supporting memorandum filed contemporaneously with this motion.

WHEREFORE, the Tribal Defendants' respectfully request that this honorable Court dismiss the claims against them with prejudice under Federal Rule 12(b)(1), (2), (4) and (5).

Dated this 30th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2012, I electronically filed the foregoing **MOTION TO DISMISS THE AMENDED COMPLAINT UNDER FED. R. 12(b)(1), (2), (4) AND (5) BY DEFENDANTS UTE INDIAN TRIBE OF THE UTAH AND OURAY RESERVATION, BUSINESS COMMITTEE FOR THE UTE TRIBE OF THE UTAH AND OURAY RESERVATION, TRIBAL COURT FOR THE UTE TRIBE OF THE UTAH AND OURAY RESERVATION, IRENE C. CUCH, RONALD J. WOPSOCK, FRANCES M. POOWEGUP, STEWART PIKE, SR., RICHARD JENKS, JR., PHILLIP CHIMBURAS AND HONORABLE SMILEY ARROWCHIS**, with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties of record as follows:

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